**REMARKS**

The Examiner has stated that claims 1-23 are pending in this application. It is respectfully pointed out that claims 1-25 are pending in this application. Claims 3, 12, 15, 18, and 21 have been amended to correct typographical errors. No new matter has been added. Applicant is respectfully requesting reconsideration of the restriction requirement in view of the following remarks.

The claims of the present application have been subjected to a Restriction Requirement under 35 U.S.C. §121 by the Examiner in this case. The Examiner suggests that restriction of the present invention into the following groups is required:

Group I, claims 1-4, 8-10, 23 and 25, drawn to a nucleic acid, a composition comprising the nucleic acid and a transposon, a vector, a host cell and a kit to identify the nucleic acid;

Group II, claims 5-7 and 11-12, drawn to a polypeptide;

Group III, claims 13-21, drawn to a method for identifying agents which inhibit growth and infectivity comprising identifying agents that inhibit expression of the nucleic acid sequence of Group I, a method of inhibiting growth and infectivity comprising contacting the bacteria with an agent and a pharmaceutical composition for use as an antibacterial agent comprising an agent which inhibits the expression of the nucleic acid of Group I;

Group IV, claims 13-21, drawn to a method for identifying agents which inhibit growth and infectivity comprising identifying agents that inhibit the activity of a polypeptide of Group II, a method of inhibiting growth and infectivity comprising contacting the bacteria with an agent and a pharmaceutical composition for use as an antibacterial agent

comprising an agent which inhibits the activity of the polypeptide of Group II; and

Group V, claims 22 and 24, drawn to a kit to identify the polypeptide of Group II, whereby the polypeptide is indicative of the susceptibility to treatment for a bacterial infection.

The Examiner suggests that Groups I and II are drawn to two completely different chemical compounds that are patentably distinct. The Examiner acknowledges that Groups I and III are related as product and process of use, but suggests that the product as claimed can be used in a materially different process such as to produce a polypeptide or to identify the presence of the nucleic acid not involved with identifying agents that inhibit the expression of the nucleic acid. The Examiner further acknowledges that Groups II and IV are related as product and process of use, but suggests that the product as claimed can be used in a materially different process such as for its activity not involved with identifying agents that inhibit the activity of the polypeptide. It is further acknowledged that Groups II and V are related as product and process of use, but the Examiner suggests that the product as claimed can be used in a materially different process such as for its activity or to identify agents that inhibit the activity. The Examiner notes that Group V could not be classified as the components were not recited in the claims and because Group V has the additional limitation that "detection of the RAT mutant polypeptide is indicative of the susceptibility to treatment for bacterial infection", Group V was separated from Group II claims.

The criteria which must be met for a restriction requirement to be proper are set forth in MPEP §803 and include: (1) that the

inventions are independent or distinct AND (2) that there would be a serious burden on the Examiner if the restriction is not required. MPEP 802.01 defines "distinct" to mean that the "two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made there, etc., but are capable of separate manufacture, use, or sale, as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER."

Claims set forth in the instant application relate to RAT molecules and methods for using the same. Therefore, a search of the relevant prior art would reveal art related to RAT nucleic acids and polypeptide encoded thereby and methods for using the same. Therefore, no additional burden would be incurred by the inclusion of all five groups of claims in this application. However, should the Examiner maintain the restriction, Applicant respectfully requests reconsideration of the restriction of claims 1-4, 8-10, 13-21, 23 and 25 into Groups I and III for the following reasons. The Examiner has acknowledged that Group I and Group III are related as product and process of use. Applicant respectfully wishes to point out that a search of the relevant prior art relating to nucleic acids encoding RAT (Group I) will provide the identity of agents which interact with the said nucleic acids as set forth in Group III claims. For example, searching the relevant prior art for RAT nucleic acids will identify inhibitory antisense and siRNA nucleic acid sequences which hybridize to said RAT nucleic acids and inhibit the expression of RAT nucleic acids as the inhibitory sequences and RAT sequences will be complementary. Accordingly, searching the

relevant prior art for the compositions of claims 1-4, 8-10, 23 and 25 (Group I) will reveal the subject matter of claims 13-21 (Group III). Therefore, no additional burden would be incurred by searching and examining together in this application claims 1-4, 8-10, 13-21, 23 and 25 currently presented as Groups I and III.

However, in an earnest effort to be completely responsive, Applicant hereby elects to prosecute Group I, claims 1-4, 8-10, 23 and 25, classified in class 435, subclass 6, 320.1, 252.3 and class 536, subclass 23.2 with traverse.

Respectfully submitted,

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